

THIS AGREEMENT is made on the _____ day of _____ 20____

PARTIES

(1) Hampshire County Council of The Castle, WINCHESTER, Hampshire, SO23 8UJ (hereinafter referred to as (the “**Council**”)

and

.....a company limited by guarantee, or a charity registered in England and Wales (company XXXXX) whose registered office is at**BACKGROUND**

- A. The parties have identified an opportunity to provide the services identified in Schedule 2.
- B. The parties are legally competent and able to enter into this Agreement pursuant to Section 93 of the Local Government Act 2003 and Section 1 of the Localism Act 2011 which grants general power of competence.
- C. The parties have agreed to the provision of the services in accordance with the terms of this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the following definitions apply:

Agreement	these Conditions together with the Schedules.
Business Day	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Charges	the charges payable by the Service Purchaser for the supply of the Services in accordance with this Agreement.
Commencement Date	has the meaning set out in Condition 2.
Commercially Sensitive Information	means any information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the Authority that, if disclosed by the Authority, would cause the Supplier significant commercial disadvantage or material financial loss.
Conditions	these terms and conditions as amended from time to time in accordance with Condition 15.
Confidential Information	means any information or matter which is not in the public domain and which relates to the affairs of the Council, or any of its contacts.
Data Protection Legislation	the Data Protection Act 1998 (DPA) and any successor legislation specifically including the General Data Protection Regulation; (EU 2016/679)(GDPR) when it enters into force

	on 25 th May 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003;
EIRs	means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
FOIA	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation
Information	has the meaning given under section 84 of FOIA.
Intellectual Property Rights	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information(including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
Request for Information	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.
Services	the services supplied by the Council to the Service Purchaser as set out in the Agreement;
Specifications	description of the Service provided attached and marked Schedule 2

- 1.2 Condition, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.

- 1.8 A reference to **writing** or **written** includes by e-mail.
- 1.9 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall take effect from the [] as set out in Part 1 of Schedule 1 and shall continue for the initial Term unless terminated earlier in accordance with Condition 9 (*Termination*).

3. SUPPLY OF SERVICES

- 3.1 The Council shall provide the Service in accordance with schedule 2 of this Agreement.
- 3.2 In consideration of the provision of the Service, the Service Purchaser shall pay the Charges in accordance with schedule 1 of this Agreement.
- 3.3 Each party warrants, represents and undertakes that it has full capacity and authority to enter into and to perform this Agreement and will perform and procure the performance of its obligations under this Agreement in compliance with all applicable laws.
- 3.4 Nothing in this contract shall restrict nor inhibit the Council from properly exercising its statutory role.

4. INTELLECTUAL PROPERTY RIGHTS

- 4.1 All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
- (a) furnished to or made available to the Service Purchaser by the Council shall remain the property of the Council;
 - (b) prepared by or for the Council for use, or intended use, in relation to the performance of the Agreement shall belong to the Council and the Service Purchaser shall not, and shall procure that the Service Purchaser's employees, servants and agents, shall not, (except when necessary for the implementation of the Agreement) without prior approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to the Agreement) which the Service Purchaser may obtain in performing the Agreement except information which is in the public domain.
- 4.2 At the termination or on expiry of this Agreement, the Service Purchaser shall, if applicable, and at the request of the Council immediately return to the Council all materials, work or records held, including any back-up media.
- 4.3 The Service Purchaser recognises that during the course of the work the Council may conceive or develop intellectual ideas, designs and know-how and the Council shall be free to use such expertise in the furtherance of his normal business, and nothing in this Agreement shall prevent the Council from performing similar tasks for another party.

4.4 The provisions of this Condition shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

5. CONFIDENTIALITY

5.1 Each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this Agreement (Permitted Purpose); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this Condition.

5.2 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible.

5.3 On termination of this Agreement, each party shall:

- (a) return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
- (b) erase all the other party's Confidential Information from its computer systems (to the extent possible); and

5.4 The provisions of this Condition 5 shall survive for a period of six years from termination of this Agreement.

6. DATA PROTECTION

6.1 Both parties shall comply at all times with provisions equivalent to the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the other party to breach any of its applicable obligations under the Data Protection Legislation.

7. FREEDOM OF INFORMATION ACT 2000 ('FOIA')

7.1 The Service Purchaser acknowledges that the Council is subject to the requirements of the FOIA and the EIRs. The Service Purchaser shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
- (b) transfer to the Council all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- (c) provide the Council with a copy of all Information belonging to the Council requested in the Request For Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period

as the Council may reasonably specify) of the Council's request for such Information; and

(d) not respond directly to a Request for Information unless authorised in writing to do so by the Council.

7.2 The Service Purchaser acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Service Purchaser. The Council shall take reasonable steps to notify the Service Purchaser of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

7.3 Notwithstanding any other term of this Agreement, the Service Purchaser consents to the publication of this Agreement in its entirety (including variations), subject only to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA and EIRs.

7.4 The Council shall, prior to publication, consult with the Service Purchaser on the manner and format of publication and to inform its decision regarding any redactions but shall have the final decisions in its absolute discretion. The Service Purchaser shall assist and co-operate with the Council to enable the Council to publish this agreement

8. LIMITATION OF LIABILITY AND INSURANCE

8.1 Nothing in these Conditions shall limit or exclude each party's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; and

(b) fraud or fraudulent misrepresentation;

8.2 Nothing in these Conditions shall limit or exclude the Council's liability for breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

8.3 Subject to Conditions 8.1 and 8.2, the Council's total liability to the Service Purchaser in respect of all other losses arising under or in connection with the Agreement, whether in agreement, tort (including negligence), breach of statutory duty, or otherwise, (including a breach of the Agreement by the Council's employees, agents or subcontractors) shall not exceed the total value of the charges in aggregate.

8.4 The Council shall obtain and maintain appropriate levels of insurance during the period of this Agreement.

8.5 This Condition 8 shall survive termination and expiry of this Agreement.

9. TERMINATION

9.1 Without limiting its other rights or remedies, each party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
- (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts;

9.2 The Council may terminate this Agreement by providing the Service Purchaser notice in writing 60 days prior to terminating the Agreement.

9.3 The Service Purchaser may terminate this Agreement by providing the Council notice in writing 60 days prior to terminating the Agreement.

10. CONSEQUENCES OF TERMINATION

10.1 On termination of the Agreement for any reason:

- (a) the Service Purchaser shall immediately pay to the Council all of the Council's outstanding unpaid invoices and, in respect of Services supplied but for which no invoice has been submitted, the Council shall submit an invoice, which shall be payable by the Service Purchaser in accordance with the terms set out in Schedule 1;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry; and
- (c) conditions which expressly or by implication have effect after termination or expiry shall continue in full force and effect.

11. NO PARTNERSHIP OR AGENCY

11.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute one party the agent of the other party, nor authorise a party to make or enter into any commitments for or on behalf of the other party.

12. SUB-CONTRACTING AND ASSIGNMENT

12.1 Except as expressly set out in this Agreement, neither party shall be entitled to give, bargain, sell, assign, novate, transfer, let or otherwise dispose of any or all of its rights and obligations under this Agreement without the prior written consent of the other party.

12.2 The Council may subcontract the whole or any part of its obligations under this Agreement with the prior written consent (such consent not to be unreasonably withheld) of the Service Purchaser.

13. ENTIRE AGREEMENT

13.1 This Agreement and any documents referred to in it constitute the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement between them relating to the subject matter of this Agreement.

14. VARIATION

14.1 No variation of this Agreement shall be effective unless it is in writing and signed by duly authorised representatives of the parties.

15. WAIVER AND SEVERANCE

15.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

15.2 If any provision of this Agreement (or part of any provision) is found by any Court or other Council of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of this Agreement, and the validity and enforceability of the other provisions of this Agreement shall not be affected.

16. DISPUTES AND NOTICES

16.1 Any notice required to be given under this Agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice at its address as set out below or as otherwise specified by the relevant party by notice in writing to each other party.

SERVICE PURCHASER Address for the service of notices	For attention of: Telephone: E-mail:
COUNCIL Address for the service of notices	For attention of: Hampshire County Council Transportation Implementation, 2nd Floor West, Elizabeth II Court, The Castle, Winchester, Hampshire, SO23 8UQ Telephone: 07933 098368 E-mail: Jo.holmes2@hants.gov.uk

16.2 A notice required to be given under this Agreement shall be validly given if sent by e-mail.

- 16.3 The provisions of this Condition 17 shall not apply to the service of any proceedings or other documents in any legal action.
- 16.4 Any question or difference or dispute arising in connection with the construction, meaning or operation of this Agreement or any matter arising out of or in connection with this Agreement, shall in the first instance be referred to the Service Purchaser's Representative and the Council's Representative for discussion and resolution. If the matter is not resolved within ten (10) Working Days of such referral, the matter shall be referred to the next level of the Council's Representative and the Service Purchaser's management which shall be directors or other senior representatives of the parties with authority to settle the dispute.
- 16.5 In the event that a dispute cannot be resolved in accordance with clause 17.4 the parties may agree to refer the dispute to an independent person, or in the case of any failure to agree, to Court.

17. THIRD PARTY RIGHTS

- 17.1 A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

18. GOVERNING LAW AND JURISDICTION

- 20.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the laws of England and Wales.

AS WITNESS the hands of the parties hereto the day and year first written.

Signed for and on behalf of Hampshire County Council by its authorised signatories:

1).....

Name :

Position :

Signed for and on behalf of by its authorised signatories:

(1).....

Name :

Position :

(2).....

Name:

Position:

SCHEDULE 1**PARTICULARS**

TERM	12 Months initially, then rolling quarterly contract
COMMENCEMENT DATE	/ /20
COMPLETION DATE	/ /20
SERVICES	As specified in the Specification attached hereto marked Schedule 2
SERVICE PURCHASER REPRESENTATIVE	
COUNCIL REPRESENTATIVE	Jo Holmes Hampshire County Council Transportation Implementation, 2nd Floor West, Elizabeth II Court, The Castle, Winchester, Hampshire, SO23 8UQ 07933 098368 Jo.holmes2@hants.gov.uk
CHARGES	<p>The Charges for the Services will be as follows:</p> <p>The Council will invoice quarterly in advance.</p> <p>If the Service Purchaser fails to pay an amount due to the Council then the Service Purchaser shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster's base rate from time to time. Such interest shall accrue on a daily basis from the final date for payment until actual payment of the overdue amount, whether before or after judgment. The Service Purchaser shall pay interest together with the overdue amount.</p> <p>The Council will review the Charges prior to the anniversary of the Commencement Date each year</p>

	<p>and notify the Service Purchaser of any proposed increase as soon as possible. The Council and Service Purchaser will discuss and agree the price review within 21 days of notification. Upon agreement of the price review, the change to the Charges will become effective from the anniversary of the Commencement Date each year.</p>
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SCHEDULE 2
SPECIFICATION